(3) Every objection shall be in writing signed by the objector and shall specify the ground of objection. The returning officer may himself lodge an objection on any of the grounds set out in paragraph (1).

(4) The returning officer shall with the least possible delay after twelve thirty o'clock in the afternoon on the day of nomination decide on the validity of every objection and inform the candidate concerned or his proposer or seconder named in the nomination paper provided for in regulation 4(2) of his decision and the grounds thereof.

(5) The decision of the returning officer shall be final and conclusive for the purposes of the election in respect of which the proceedings are being held, and shall not be called in question in any court:

Provided that any person aggrieved by the decision of the returning officer may present an election petition in respect thereof on the grounds set out in section 32(b) of the Election Offences Act, 1954, and the provisions of the said Act shall take effect accordingly."

It was contended for the applicant that paragraph (1) in giving him the right to object to a nomination paper also gave him the right to make the application. It was also contended for the applicant that in overruling and dismissing the objections of the applicant "without even calling upon [the candidates] for an explanation of [the applicant's] objections or rendering a clarification or clarifying [the applicant's] objections" the first respondent acted arbitrarily and with little or no regard for the regulations. It was clear from the record that in respect of each of the objections taken by the applicant the first respondent did make his decision and did give his reasons for so doing albeit in very brief form. In my view the first respondent did in fact perform his duty under paragraph (4).

With regard to the allegation that the first respondent had made no decision of his own but had in fact substituted that of the Attorney-General's Chambers, I could find nothing in the words "atas nasihat daripada Jabatan Peguam Negara" to indicate that this was in fact so. I was of the opinion that this application was entirely misconceived. In any case I considered that paragraph (5) already provided a perfectly adequate machinery to meet any genuine grievances of the nature of those put forward by the applicant. This was very clear from the reference in the proviso to that paragraph to section 32(b) of the Election Offences Act, 1954 for the avoidance of an election in an election petition. It seemed to me that if an adequate machinery is so provided by the law then an aggrieved party must avail himself of that machinery. My opinion was fortified by what was said by Fazl Ali J. in the Indian election case of *N.P. Ponnuswami* v. *Returning Officer, Namakkal,*[1] at page 69 as follows: —

"It is now well-recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes J. in *Wolverhampton New Water Works Co.* v. *Hawkesford,* (1859) 6 C.B. (N.S.) 336, at p. 356 in the following passage:

'There are three classes of cases in which a liability may be established founded upon statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy: there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course, applicable to cases of the second class. The form given by the statute must be adopted and adhered to.'

The rule laid down in this passage was approved by the House of Lords in *Nevile* v. *London Express Newspaper Ltd.* [1919] A.C. 368 and has been reaffirmed by the Privy Council in *Attorney-General of Trinidad and Tabago* v. *Gordon Grant & Co.,* [1935] A.C. 532 and *Secretary of State* v. *Mask & Co.,* 44 Cal. W.N. 709; and it has also been held to be equally applicable to enforcement of rights (see *Hurdutrai* v. *Off. Assignee of Calcutta,* 52 Cal. W.N. 343, at p. 349). That being so, I think it will be a fair inference from the provisions of the Representation of the People Act to state that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage."

I agreed entirely with the opinion of the learned judge expressed in this case and was of the view that it was not open to the applicant to pursue this matter by seeking the issue of a prerogative writ when he had not exhausted the remedies specifically provided by our election legislation. Any other view would open the floodgates to a positive deluge of similar applications attempting to bypass the machinery provided by the election law.

I accordingly dismissed the application for leave.

Application dismissed.

Solicitors: *Syarikat Lim Soh Wah.*

DATUK PATINGGI ABDUL RAHMAN YA'KUB v. ABANG MOHAMMAD BIN ABANG ANDING

[O.C.J. (Seah J.) December 12, 1978, January 16, 1979 & February 10, 1979]

[Kuching — Civil Suit No. K. 63 of 1978]

Defamation — Libel — Letters written by defendants containing matters libellous to plaintiff's office as Chief Minister and discrediting his reputation — Suit uncontested — Damages — Principles in assessing.

The plaintiff, the Chief Minister of Sarawak was granted interlocutory judgment in default of appearance on May 19, 1978 against the defendant, an assistant to a political secretary of the plaintiff. The plaintiff applied by motion to assess the amount of damages to be recovered from the defendants.

The plaintiff claimed that the defendant had, in a letter dated January 11, 1978 addressed to the Prime Minister of Malaysia, Datuk Hussein Onn stated that "the plaintiff was evilly opposed to the Prime Minister and the Barisan Nasional and that the plaintiff's policy was to take Sarawak out of the Federation of Malaysia" (The plaintiff was a member and President of a party, Pesaka Bumiputera Bersatu which in turn was a member of the Barisan Nasional).

In another letter of December 14, 1977 addressed to Abang Abu Bakar bin Datu Bandar Abang Haji Mustapha, Yang di-Pertua, Dewan Undangan Negeri, Sarawak, the defendant indicated that "the plaintiff's ideas were racialist, that he viewed political parties in racialist terms and that he viewed his own party as a Melanau party and that anyone who joined it would simply be made use of for the benefit only of the Melanaus". As a result of the said publications the plaintiff claimed that he had been seriously

injured in his character and reputation and in the way of his said office and had been brought into scandal, odium and contempt. An apology had been tendered by the defendant both by letter and in open court.

The motion was brought to assess the amount of damages to be recovered against the defendant pursuant to the said interlocutory judgment.

Held: (1) the 'higher' the plaintiff's position the heavier the damages for such persons are more vulnerable to defamation insofar as they are more well-known, often hold public position of considerable responsibility and trust, come into contact with more people and may have a wider circle of friends;

(2) the more enormous, outrageous, scandalous or scurrilous the defamation, the greater should be the damages. The seriousness of the libel is always a relevant consideration and the other factors to be considered are special damage, injury to the plaintiff's feelings including aggravating factors, extent of publication and mitigating factors;

(3) no apology, retraction or withdrawal can ever be guaranteed completely to undo the harm that it has done or the hurt caused. However, it is an important factor to be taken into account in assessing damages;

(4) compensatory damages to be awarded to the plaintiff in respect of the two libels would be limited to fair compensation to the injured's feelings. The plaintiff should be awarded $25,000 as compensatory damages.

Cases referred to:

(1) *Broome* v. *Cassell* [1972] A.C. 1027, 1073, 1125.

(2) *Holloway* v. *Truth (N.Z.) Ltd.* (1959) 78 N.Z.L.R. 21; 79 N.Z.L.R. 69; [1960] 1 W.L.R. 997.

(3) *Syed Husin Ali* v. *Sharikat Penchetakan Utusan Melayu Berhad & Anor.* [1973] 2 M.L.J. 56.

(4) *Yap Bor Lim* v. *Chia Thye Poh & Anor.* [1965] 2 M.L.J. 123.

(5) *Youssoupoff* v. *Metro-Goldwyn-Mayer Pictures Ltd.* (1933-34) 50 T.L.R. 581.

(6) *Ley* v. *Hamilton* 153 L.T. 384, 386.

CIVIL SUIT.

Mohammed Asfia Awang Nassar for the plaintiff.

Defendant not represented.

Seah J.: This is a motion to assess the amount of damages sought to be recovered against the defendant, Abang Mohammad bin Abang Anding, pursuant to an Interlocutory Judgment in default of appearance dated May 19, 1978 obtained by the plaintiff, Y.A.B. Datuk Patinggi Abdul Rahman Ya'kub.

On February 16, 1978 the plaintiff took out a writ of summons against the defendant and the statement of claim filed by the plaintiff's advocates reads as follows:

1. The plaintiff is and was at all material times the Chief Minister of Sarawak.

2. The plaintiff is and was at all material times a member and President of Parti Pesaka Bumiputera Bersatu which in turn is and was at all material times a member of the Barisan Nasional Malaysia.

3. The defendant was an assistant to a political secretary of the plaintiff and is leader of a new political party now seeking registration under the name of Bersatu Rakyat Jelata Sarawak (BERASA).

4. In a letter dated January 11, 1978 addressed to Y.A.B. Datuk Hussein Onn, the Prime Minister of Malaysia, and duly received by the said Datuk Hussein Onn in the ordinary course of post, the defendant falsely and maliciously wrote and published of the plaintiff and of him in relation to the said office as Chief Minister and in relation to his conduct therein the following words in Malay.

5. The following is a literal translation of the said words:

"Following upon the letter from General Abang Kifli dated December 1, 1977 concerning the evil intention of the Chief Minister of Sarawak Datuk Abdul Rahman Ya'kub who is trying to separate Sarawak from the Federation of Malaysia, I wish to pledge to you that we in Parti Bersatu Rakyat Jelata Sarawak will fight against the evil intention of Abdul Rahman. This is because at the time Sarawak became independent in the Federation of Malaysia, I together with the late Datuk Bandar Abang Haji Mustapha in Parti Negara sacrified our possessions and our energy struggling for the freedom of Sarawak in the Federation of Malaysia. It was not Abdul Rahman who struggled for Malaysia. The rice that we prepared was eaten by Abdul Rahman. We supported him in the party and he has become rich. Now he has an evil intention towards you the Prime Minister and we strongly disagree with him.

....

Because the multiracial people of Sarawak no longer agree to the leadership of Abdul Rahman Ya'kub you may have received anonymous letters from the people of Sarawak which inform you about the wicked intention of Abdul Rahman Ya'kub towards you the Prime Minister and towards the people of Sarawak. We strongly disagree that Sarawak should leave Malaysia. If Abdul Rahman does not agree with us let him personally leave Malaysia."

6. By the said words, the defendant meant and was understood to mean that the plaintiff was evilly opposed to the Prime Minister and the Barisan Nasional and that the plaintiff's policy was to take Sarawak out of the Federation of Malaysia.

7. In a letter dated December 14, 1977 addressed to Y.B. Abang Abu Bakar bin Datu Bandar Abang Haji Mustapha, Yang di-Pertua, Dewan Undangan Negeri Sarawak, the defendant falsely and maliciously wrote and published of the plaintiff in relation to his said office as Chief Minister and in relation to his conduct therein the following words in Malay.

8. The following is a literal translation of the said words:

"...they are unhappy to hear the words of Datu Rahman at Miri on July 7, 1977 which appeared in the *Borneo Bulletin* saying that Party SNAP is an Iban Party, SUPP is a Chinese Party and PBB is a Melanau Party. Perhaps you know about this. So there is no point in us remaining in Party PBB only to be used of as tools of the Melanaus."

9. By the said words the defendant meant and was understood to mean that the plaintiff's ideas were racialist, that he viewed political parties in racialist terms and that he viewed his own party as a Melanau party and that anyone who joined it would simply be made use of for the benefit only of the Melanaus.

10. In consequence of the first said publication and further in consequence of the second said publication the plaintiff has been seriously injured in his character credit and reputation and in the way of his said office and has been brought into scandal, odium and contempt.

The plaintiff claims against the defendant as follows:

(a) damages;

(b) an injunction restraining the defendant from further writing or publishing the said or any further libel or injurious falsehood upon the plaintiff;

(c) costs and

(d) such other or further order as this Honourable Court deems just.

Because of difficulty in tracing the whereabout of the defendant, service of the writ was effected on the defendant by means of substituted service by publication in 2 consecutive issues in *The Sarawak Tribune* on April 26 and 27, 1978 respectively. Since no appearance had been entered by the defendant, the Acting Senior Assistant Registrar signed an Interlocutory Judgment in default of Appearance on May 19, 1978 which reads:

"The defendant having been served by substituted service and not having appeared to the Writ of Summons herein, it is this day adjudged that an injunction be granted to the plaintiff against the defendant restraining the defendant from further writing or publishing any further libel or injurious falsehood upon the plaintiff and it is further adjudged that the plaintiff recover damages against the defendant to be assessed and costs."

On October 16, 1978 advocates for the plaintiff took out a notice of motion against the defendant for the damages to be assessed in open court.

At the hearing Encik Adenan Hj. Satem and later Encik Mohammed Asfia Awang Nassar represented the plaintiff while the defendant appeared in person.

Now, the principles to be applied by a judge in assessing damages are the same as the principles to be applied by a jury. At paragraph 1358 of *Gatley* on Libel and Slander (7th ed.) the following passage appears:

"In an action of libel 'the assessment of damages does not depend on any legal rule' (*per* Lord Watson in *Bray* v. *Ford* [1896] A.C. at p. 50). The amount of damages is 'peculiarly the province of the jury,' who in assessing them will naturally be governed by all the circumstances of the particular case. They are entitled to take into their consideration the conduct of the plaintiff, his position and standing, the nature of the libel, the mode and extent of publication, the absence or refusal of any retraction or apology, and the whole conduct of the defendant from the time when the libel was published down to the very moment of their verdict. They may take into consideration the conduct of the defendant before action, after action, and in court at the trial of the action and also, it is submitted, the conduct of his counsel, who cannot shelter his client by taking responsibility for the conduct of the case. They should allow 'for the sad truth that no apology, retraction or withdrawal can ever be guaranteed completely to undo the harm it has done or the hurt it has caused'. They should also take into account the evidence led in aggravation or mitigation of the damages. They should not take into account in assessing damages any part of the words complained of in respect of which the defendant has made out a defence, or any damage done to the plaintiff's reputation or feelings by any defamatory matter for which the plaintiff is not responsible. They should not speculate on whether the defendant will be indemnified.

The conduct of the defendant, his conduct of the case and his state of mind are thus all matters which the plaintiff may rely on as aggravating the damages. Moreover, it is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury can take into account in assessing the appropriate compensation. In awarding aggravated damages the natural indignation of the court at the injury inflicted on the plaintiff is a perfectly legitimate motive in making a generous, rather than a more moderate award to provide an adequate solatium — that is because the injury to the plaintiff is actually greater, and, as a result of the conduct exciting the indignation, demands a more generous solatium" (see paragraph 1359).

In a libel action, the general rule is that damages are assessed on a compensatory basis. However, in certain circumstances, exemplary damages, or punitive damages as they are otherwise described (see *Cassell & Co. Ltd.* v. *Broome & Anor.*[1] at page 1073 *per* Lord Hailsham) may be awarded.

Compensatory damages may include not only actual pecuniary loss and anticipated pecuniary loss or any social disadvantages which result, or may be thought likely to result, from the wrong which has been done. They may also include the natural injury to his feelings — the natural grief and distress which he may have felt at having been spoken of in defamatory terms, and if there has been any kind of high-handed, oppressive, insulting or contumelious behaviour by the defendant which increases the mental pain and suffering caused by the defamation and may constitute injury to the plaintiff's pride and self-confidence, these are proper elements to be taken into account in a case where the damages are at large. But these matters may not be taken into account as a reason for giving punitive damages (see paragraph 1360). In short, compensatory damages may include special damages and if aggravating circumstances exist, aggravated damages can also be awarded.

Having stated the principles to be taken into account in assessing damages in a libel action, I would now consider some of the relevant cases. I would first of all, deal with the New Zealand case of *Holloway* v. *Truth (NZ) Ltd.*[2] where the brief facts are these:

The plaintiff was a member of Parliament and was at the material time a Minister of Industries and Commerce. The defendant was the printer and publisher of a weekly newspaper called *Truth* having a wide and extensive circulation throughout New Zealand. The paper published an article informing the readers that someone had seen Judd with the object of getting from him information about import procedure and had been told by Judd to "see Phil and Phil would fix it"; that Judd however, warned him "whatever he did, not to let Mr. Nash (Prime Minister) hear about it". Phil was the Hon. Philip North Holloway, the Minister of Industries and Commerce. Shortly after this article, the plaintiff commenced an action against the defendant for defamation in which he claimed that the words "see Phil and Phil would fix it" were defamatory in that, in their context, they meant, and were understood to mean, that he was a person who had acted, and was prepared to act, dishonestly in connection with the issue of import licences.

After a lengthy hearing, during which the plaintiff gave evidence and was subjected to a long and severe cross-examination, both on matters directly relevant,

and on collateral matters as well going only to credibility, the jury found in favour of the plaintiff and awarded him £11,000NZ by way of damages.

There was an appeal to the New Zealand Court of Appeal and the Privy Council by the defendant. Both these appeals were dismissed (see 79 N.Z.L.R. 69 and [1960] 1 W.L.R. 997). The newspaper did not raise before the Privy Council many of the issues which had been debated in the court in New Zealand. It did not challenge the ruling that the occasion was not privileged. It confined itself to the contention that the trial judge had misdirected the jury and sought a new trial on that ground.

As regards damages, the New Zealand Court of Appeal said:

"From what the judge has said, we would think that he did not altogether approve of the way the defence was conducted, and that he thought that Mr. Cooke (counsel for the defendant) steered a very narrow course which at times brought him very close to saying things which he could not properly say in the absence of a plea of justification. However this may be, the short answer to all that Mr. Cooke has said on the topic is that the jury, in awarding no less than £11,000 by way of damages, obviously were not thinking in terms of contemptuous damages at all; and therefore, even if there had been anything in Mr. Cooke's complaint, it could not possibly be said that anything that the judge said on the subject of damages had resulted in a miscarriage of justice." (See p. 93).

The next case I would like to refer to is Kuching High Court Civil Suit No. K.42 of 1969 between *Y.B. Dato Abdul Rahman bin Ya'akub Al-Haj* as plaintiff and *Messrs. Vanguard Sdn. Bhd. and Desmond Leong Kok Shin* as defendants. In that case the plaintiff's claim was for damages for libels contained in 2 articles published in *The Vanguard* dated November 29 and 30, 1968 respectively. At the material times, the plaintiff was the Federal Minister for Lands and Mines; the first-named defendants were the proprietors, publishers and printers and the second-named defendant was the editor of *The Vanguard*, a daily English newspaper having an extensive circulation throughout Sarawak.

After a hearing in which both the plaintiff and his witnesses and the second-named defendant gave evidence, oral judgment was delivered by the learned trial judge and I quote from the record:

"Upon the evidence before me I find the allegations against the defendants proved.

I therefore give judgment in favour of the plaintiff in the sum of $90,000 with costs."

I have examined the case file and have observed that no reasoned judgment was written by the learned trial judge.

The third case I should like to consider is the case of *Syed Husin Ali* v. *Sharikat Penchetakan Utusan Melayu Berhad & Anor.*[3] In this case the plaintiff claimed damages for libel contained in a newspaper published by the first defendant and of which the second defendant was the editor. The publication was admitted and it was proved that the words complained of referred to the plaintiff. The plaintiff alleged that the words complained of were capable of the following false innuendoes, namely that the plaintiff was dishonest, disloyal to the Government of Malaysia, a subversive element, an irresponsible politician, an ungrateful person, a supporter of President Sukarno and an instigator of unrest in the country. The only issue was whether the words complained of were defamatory of the plaintiff. Mohamed Azmi J. held (1) in the circumstances of this case, the words complained of, when considered in the context of the news report, were defamatory of the plaintiff and (2) having regard to all the circumstances of the case, particularly the nature of the libel, the position of the plaintiff and the extent of the publication, damages in the sum of $6,500 would be fair and adequate to vindicate him to the public and console him for the wrong done.

It was admitted in that case that the plaintiff was at the material time a lecturer of the University of Malaya and that the first defendant's newspaper, *Utusan Melayu* was an influential Malay daily newspaper having a wide circulation throughout the country of Malaysia.

Lastly, there was the case of *Yap Bor Lim* v. *Chia Thye Poh & Anor.*[4] and the headnote reads:

"The defendants admitted publishing a libel on the plaintiff and submitted to the judgment of the court in regard to the question of damages and costs. It was argued for the defendants that the publication in question was made without malice, though hastily and on information from a reliable source and that in all the circumstances damages should be nominal. The plaintiff on the other hand claimed that the libel was made recklessly and with malice.

Winslow J. held that the statement was published as part of a political campaign to discredit the political opponents of the defendants and it cannot be held therefore that nominal damages would suffice. Damages were awarded in the sum of $5,000 to be reduced to $3,000 if a satisfactory apology was published."

The plaintiff in that case was a graduate of Nanyang University and the first defendant was an editor of the Chinese edition of the Barisan, the organ of the Barisan Sosialis, an opposition party in Singapore at the relevant time.

These cases seem to support the proposition that the 'higher' the plaintiff's position the heavier the damages. Support for this view can also be found in the case of *Youssoupoff* v. *Metro-Goldwyn-Mayer Pictures Ltd.*[5] The reasons appear to be that such persons are more vulnerable to defamation insofar as they are more well-known, often hold public positions of considerable responsibility and trust, come into contact with more people and may have a wider circle of friends.

It seems also reasonable to say that the more enormous, outrageous, scandalous or scurrilous the defamation, the greater should be the damages (see *Youssoupoff* v. *MGM Pictures Ltd., supra*). The seriousness of the libel is of course always a relevant consideration and the other factors to be taken into account are:

(a) special damage;

(b) injury to plaintiff's feelings including aggravating factors;

(c) extent of the publication and

(d) mitigating factors (see *Duncan & Neill* on Defamation at para. 18.09).

In assessing damages in this case, the court is placed in a predicament in that no evidence was given either by the plaintiff or the defendant. It follows that damages should therefore be assessed on the basis of the pleadings contained in the statement of claim. For the purpose of assessing damages in this case I would assume that all the allegations in the statement of claim are deemed to have been proved.

I would now deal with special damage. Special damage for the purpose of the law of defamation may be defined as any material or temporal loss which is either a pecuniary loss or is capable of being estimated in money. For example, a plaintiff is entitled to recover as special damage any pecuniary loss suffered as a result of losing his employment or a contract because of the publication of the defamatory matter. Where the plaintiff wishes to claim special damage he must give particulars of his loss in the pleadings and give discovery of any relevant documents.

I have examined the statement of claim delivered by the plaintiff's advocates and am satisfied that no special damage has been pleaded nor any particulars of special damage or pecuniary loss disclosed in the pleadings. I hold therefore that the plaintiff is not claiming special damage against the defendant.

It is important to remember that the defendant's conduct between the date of publication of the libel and the trial of the action may thus increase the damages. In this sense it may be said to "aggravate" the damages recoverable as conversely, the publication of an "apology" may "mitigate" them. On the other hand the defendant's conduct after the publication of the libel may also afford cogent evidence of his malice in the original publication and thus evidence upon which "aggravated damages" may be awarded. It should be emphasised that the sum to be awarded is a single sum and that aggravated damages are intended as compensation for the plaintiff and not as a form of punishment to the defendant.

In the statement of claim advocates for the plaintiff did not give any particulars of the defendant's conduct between the dates of the publications of the 2 libels and the issue of the writ of summons. It follows that aggravated damages are not claimed by the plaintiff. As to the extent of the publications, the statement of claim alleges that the first libel dated January 11, 1978 was published to the Prime Minister of Malaysia, Y.A.B. Datuk Hussein Onn and the second libel dated December 14, 1977 was published to the Yang di-Pertua, Dewan Undangan Negeri Sarawak, Y.B. Abang Abu Bakar bin Datu Abang Hj. Mustapha. Apart from these two very prominent personalities, it has not been pleaded that the said libels were published to any other persons or politicians in Malaysia. In short, it appears that the publications of the 2 libels were confined only to 2 distinguished politicians in Malaysia. However, I seem to recall what Lord Atkin said in *Ley* v. *Hamilton*[6]: "It is impossible to track the scandal, to know what quarters the poison may reach." This passage was quoted by Lord Diplock in *Broome* v. *Cassell & Co.* at 1125.

Touching on mitigating factors, there are a number of matters which the court is entitled to take into account so as to reduce the damage which would otherwise be appropriate. The main factors may be listed as follows:

(i) the reputation of the plaintiff;

(ii) the behaviour of the plaintiff towards the defendant and in the action;

(iii) any apology tendered by the defendant;

(iv) sums received by the plaintiff in respect of similar publications.

For the purpose of assessing damages I would disregard factors (ii) and (iv) inasmuch as they have not been pleaded but would confine myself to the other 2 factors.

Counsel for the plaintiff has informed the court that the defendant has written a letter addressed to the plaintiff tendering his profound apology for the publications of the 2 libels after the notice of motion had been served on him personally. At the resumed hearing of the motion on January 16, 1979 the defendant again apologised to the plaintiff in open court and this was accepted by counsel on behalf of the plaintiff. In addition, the defendant undertakes not to publish, write or utter anything which will scandalise, ridicule or bring down the good name of the plaintiff in the future. He also states that he will safeguard the good name of the plaintiff in future and that he does not wish to see anybody bringing down the good name and deeds of the plaintiff since the plaintiff became the Chief Minister of Sarawak.

As to the reputation of the plaintiff, paragraphs 1 and 2 of the statement of claim state that the plaintiff is and was at all material times the Chief Minister of Sarawak and that he is and was at all material times a member and President of Parti Pesaka Bumiputera Besatu which in turn is and was at all material times a member of the Barisan Nasional Malaysia. There is no doubt that the plaintiff enjoyed and is still enjoying a good reputation in the State of Sarawak and the Federation of Malaysia.

Although the defendant has apologised to the plaintiff both by letter and in open court and that apology has been accepted by the plaintiff through his counsel, the fact remains that an apology does not provide a complete defence to an action for defamation. Moreover, no apology, retraction or withdrawal can ever be guaranteed completely to undo the harm that it has done or the hurt caused. However, it is an important factor to be taken into account in assessing damages.

Now, according to the pleadings, it is alleged that in consequence of the publications of the first and second libels by the defendant, the plaintiff has been seriously injured in his character credit and reputation and in the way of his said office and has been brought into scandal, odium and contempt.

I would pause here to say something about the first libel. It is of course, the worst and most vile libel that could be imagined. It questioned the loyalty of the plaintiff towards the Prime Minister and the Federation of Malaysia thus putting the political career of the plaintiff in jeopardy. The defendant has now

not only tendered his apology to the plaintiff but also undertaken in open court to protect and safeguard the good name and deeds of the plaintiff since he became the Chief Minister of Sarawak. I take judicial notice that the plaintiff was appointed Chief Minister of Sarawak on July 7, 1970 and is still holding that high office of state.

In assessing damages it must not be lost sight of that this case is distinguishable from the cases which I have cited in this judgment in that there was no contest between the parties and the defendant, who is not legally represented, allowed judgment in default to be entered against him with damages to be assessed after he had failed to enter appearance to the writ. It seems to me that compensatory damages to be awarded to the plaintiff in respect of these two libels would be limited to fair compensation to the plaintiff's injured feelings. Bearing this in mind and taking into consideration all the relevant factors which should be taken into account, I would award to the plaintiff the sum of $25,000 as compensatory damages. The plaintiff is clearly entitled to costs of this action which costs are to be taxed on the higher scale.

Order accordingly.

Solicitors: *Satem, Nassar & Co.*

SIAH KWEE MOW & ANOR. v. KULIM RUBBER PLANTATIONS LTD.*

[O.C.J. (Abdoolcader J.) May 25 & 26, 1976; May 11 & 12, August 10 & 11, 1977; January 17-19, 24-26, November 21-23, 28-30, 1978 and February 20, 1979]

[Ipoh — Civil Suit No. 550 of 1967]

Contract — Agreement for sale of rubber estate — Breach of agreement by purchaser — Right of vendor to forfeit deposit — Allegation that vendor had breached terms of agreement — Breaches not proved — Breaches not fundamental — Purchaser did not choose to rescind agreement — Whether time of essence of contract — Extension of one month to complete granted — Whether time waived — Equitable principles — Whether applicable.

In this case the plaintiffs agreed to purchase a rubber estate in Perak for $3 million and paid the sum of $300,000 by way of deposit and part payment. It was a term of the contract that completion should take place on 30th August 1967. At the request of the plaintiffs time for completion was extended by one month to the 30th September 1967 and on their failure to complete by paying the balance of the purchase price on that day the defendants exercised their option to terminate the agreement and forfeited the deposit and part payment. The plaintiffs thereupon claimed the return of the deposit and part payment with interest. It was alleged by the plaintiffs that (a) the defendants were in breach of clause 10 of the agreement in that they altered the tapping system in certain areas of the estate and applied stimulant to the trees subsequent to the execution of the agreement without the plaintiffs' consent, knowledge or authority (b) the defendants were in breach of Clause 18(a) of the agreement in that they failed to or did not use their best endeavours to prevent interference by the estate labour force to access by the plaintiffs and their agents or representatives including prospective sub-purchasers to the estate and that this resulted in a repudiation of the agreement by the defendants.

The plaintiffs also claimed that the time for completion had been waived by the grant of the one month's extension and that time became at large so that they were entitled to reasonable time to complete the purchase. On the facts the learned trial judge found (1) that the defendants were not in breach of the agreement as they had used their best endeavours to ensure no interference from their labourers or other employees and there had been no prior notification of visits as required by Clause 18(a); (2) the changes effected in the tapping system, the application of stimulant and the introduction of Sunday tapping were all made with the full knowledge consent and approval of the plaintiffs and there had therefore been no breach of Clause 10 of the agreement; (3) the complaints about lack of access to the estate due to interference by the labourers and the changes in the tapping system, the application of stimulant and the introduction of Sunday tapping were only a smoke screen through which the plaintiffs hoped to be able to resile from the agreement.

Held: (1) there were no breaches of clauses 10, 18 or 19 of the agreement as alleged by the plaintiffs. Even if the plaintiffs had been able to prove the breaches alleged these were not fundamental breaches and would not amount to a repudiation of the agreement by the defendants as alleged and would only entitle the plaintiffs, if at all, to sue for damages;

(2) the defendants were entitled to forfeit the deposit and part-payment as the plaintiffs were in breach of the agreement in not completing the purchase by paying the balance of the purchase price on the date fixed for completion;

(3) by the extension of the completion date by a period of one month to a fixed date, time was not waived and did not become at large but remained at all times still of the essence and therefore there was no question that the plaintiffs were entitled, as they claimed, to be given reasonable time to complete the purchase of the estate;

(4) the principle of the intervention of equity to relieve against forfeiture is not applicable where the Contracts Act, 1950, applies in view of its specific provisions.

Cases referred to:-

(1) *Howe* v. *Smith* (1884) 27 Ch. D. 89, 103-104.
(2) *S.S. Maniam* v. *The State of Perak* [1957] M.L.J. 75.
(3) *Linggi Plantations* v. *Jagatheesan* [1972] 1 M.L.J. 89.
(4) *Barclay* v. *Messenger* (1874) 30 L.J. 351, 354.
(5) *Lock* v. *Bell* [1931] Ch. 35.
(6) *Tropical Traders Ltd.* v. *Goonan* (1964) 111 C.L.R. 41, 53-55.
(7) *White* v. *Ross* [1960] N.Z.L.R. 247, 248-249.
(8) *Wong Kup Sing* v. *Jeram Rubber Estates Ltd.* [1969] 1 M.L.J. 245.
(9) *Luck* v. *White* (1973) 26 P. & C.R. 89, 95.
(10) *Buckland* v. *Farmer & Moody* [1978] 3 All E.R. 929, 937.
(11) *Tay Say Geok* v. *H.G. Warren* [1963] M.L.J. 179; [1965] 1 M.L.J. 44.

CIVIL SUIT.

R.R. Chelliah (*V.W. Balasingam* with him) for the plaintiffs.

Dato Wong Seng Chow (*K.C. Loke* and *Paul Raj* with him) for the defendants.

Abdoolcader J:

Preliminary: Issues.

The plaintiffs' claim in these proceedings is for the return of a sum of $300,000 paid by them to the defendants by way of deposit and part payment for the purchase of a rubber estate in Sungei Siput, Perak known as Dovenby Estate. I should perhaps here observe that this suit has been beset by an unfortunate and chequered history of inaction as the writ was taken out on October 24, 1967, but the case only came on for hearing in the latter part of May 1976, and this took eighteen days stretched for various reasons over a period of some two and a half years.

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* We understand that there is no appeal against this judgment.